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U.S. Citizenship
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Services

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[redacted]

FILE: LIN 04 002 51613 Office: NEBRASKA SERVICE CENTER Date: AUG 16 2006

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the petition, the petitioner was a postdoctoral research associate at the Center for Simulation of Advanced Rockets (CSAR) at the University of Illinois at Urbana-Champaign.[1] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

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[1] We note that the petitioner is no longer at CSAR at the University of Illinois; in September 2005 he filed a new petition on his own behalf, listing an address in New Jersey. The new petition, with receipt number EAC 06 011 51323, was approved in January 2006.

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner's initial submission includes nine witness letters. The majority of the witnesses have taught or worked with the petitioner in some capacity; they describe his work in varying degrees of detail. For example, Professor [redacted] of the University of Illinois states:

> [The petitioner] has been hired as a postdoctoral research associate by CSAR as a result of his excellent performance for his PhD studies in atomistic scale simulation of materials and recommendations from faculty at Arizona State University. His thesis on "Multiscale Modeling of Thin Film Growth" applied state-of-the-art methodology to modeling copper thin film growth behavior for advanced Very Large Scale Integrated Circuits metallization. Such research is critical for developing the future generation of electronic devices for many applications including medical, environmental, and military uses. . . .[I]n his research, he developed a controlled multidimensional optimization scheme and implemented it in the fitting software tools. As a result of this, the potentials developed with this scheme are greatly improved in their transferability compared to those by previous force-matching optimization schemes.

[redacted], a senior principal staff scientist at Motorola, where the petitioner served as an intern in the summer of 2002, states:

> I first interacted with [the petitioner] during his graduate studies at Arizona State University approximately four years ago. I was immediately impressed with his keen intellect, and unusual aptitude for materials science. Since then, I have followed [the petitioner's] research with great interest, and have consistently been deeply impressed by [the petitioner's] outstanding achievements. . . .
>
> [The petitioner] has been responsible for truly significant and original contributions to materials science. His globally controlled multidimensional optimization scheme for potential fitting is an especially valuable contribution to the scientists and engineers in the field of materials simulation. [The petitioner's] original scheme provides an effective method to improve the transferability of potentials via controlling the arbitrary variations of potential functions due to the statistical distribution of fitting data. By setting up the fundamental methodology to be used in his own research as well as by others in the field, [the petitioner] has opened new doors through his work for developing reliable inter-atomic potentials. Such potentials are the bases for performing high quality materials simulations in VLSI applications that are widely used in U.S. medical, defense, and environmental research and development. The applications of [the petitioner's] potential fitting scheme hold great academic and technological promise. . . .
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> Perhaps one of [the petitioner's] most important and vital contributions to the field is his development of a unique tantalum potential that is superior to previous ones developed by other scientists. . . . The globally controlled multidimensional optimization scheme developed by [the petitioner] not only makes it possible to obtain an efficient embedded atom method tantalum potential with better transferability, but also solved the problem of instability previously encountered. . . .
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> [The petitioner] developed new copper-tantalum Embedded Atom Method potential and is using it for large scale Molecular Dynamics simulation of copper thin film growth on tantalum substrate, an essential research project to understand the growth mechanism of copper films that will provide insight into film structure, properties, and deposition conditions. This is very important to solve various problems encountered in device development, especially when the shrinking of feature sizes makes experimental observation more and more difficult.

Counsel states that the original filing includes "letters from scientists who have not worked with [the petitioner] . . . (See Exhibits 1, 2)." Exhibit 1 is a letter from [redacted] of Sandia National Laboratories, who states that he and the petitioner "have recently collaborated on a scientific study . . . , which involved the creation of inter-atomic force-fields for use in the computer simulation of Ta-based solids. . . . I expect this force-field to be widely used by the computational and materials science communities to further improve our understanding and application of Ta-based devices." This acknowledged collaboration contradicts counsel's claim that [redacted] has not worked with the petitioner.

The only initial witness who is not affiliated with any institution where the petitioner has worked or studied, and who specifically states that he has not worked with the petitioner, is Professor Barend J. Thijsse of Delft University of Technology in the Netherlands, who asserts that his knowledge of the petitioner's work derives from the petitioner's published work and "a presentation [the petitioner] made [at] a meeting of the Materials Research Society." Prof. Thijsse states:

> Part of the work [the petitioner] was engaged in is the computational technique called Kinetic Monte Carlo simulations. This technique is one of the few existing techniques that are successful in "breaking the time barrier," i.e. in allowing the study of processes in materials over realistic time scales yet using the basic principles of atomic behavior that occur at time scales that are a billion times shorter. Bridging this gap is one of the toughest problems in understanding materials at all important levels. In his papers, [the petitioner] has shown that with a clever application of this technique many of the complex phenomena of film growth can be studied and that several underlying mechanisms are better understood. The second main subject of [the petitioner's] research is the development of reliable interatomic potentials, notably for the copper-tantalum system that lies at the heart of new-generation microelectronic devices. Interatomic potentials are the essential engine of materials simulations. If they are incorrect, because of a too simple formalism, the computers produce results that may look interesting but are nonetheless unrealistic. On the other hand, if the interatomic potentials are correct, because they were given all the details of the quantum level, the computations will take far too long and again the simulations will be next to useless. The secret of good potential construction is therefore to strike a balance between these two extremes and devise an efficient scheme by which a reliable, yet fast potential can be generated. This is an area of considerable activity in the Materials community, and [the petitioner] has shown in a major paper that he has found such a scheme, one that incorporates novel elements. His method is certainly not restricted to copper-tantalum but can be applied to virtually all materials, both existing and nonexisting, thus offering great potential for the future.

The petitioner's initial submission includes copies of his published and presented work, as well as some electronic mail messages inquiring about that work. To establish the extent of the impact of this published work, the director requested "copies of all published articles (as of October 2, 2003) by other scientists that cite or otherwise recognize [the petitioner's] research contributions."

In response to the director's notice, the petitioner submits evidence of over 30 citations of the petitioner's published work (including a small number of self-citations by co-authors). The petitioner also submits two additional witness letters. William A. Dick, managing director of CSAR, repeats the essential elements of descriptions and assessments of the petitioner's work already discussed above. Professor Yuri Mishin of George Mason University states:

> I will note for the record that I have never worked with or collaborated with [the petitioner]. My knowledge of his research is based on his publications. . . .

> In one of science's truly cutting-edge fields, [the petitioner] has proved himself to be among the most creative and insightful researchers. . . . The tantalum potential developed by him has been extensively used or cited by many researchers in their research work. . . . [The petitioner's] novel research work has already made an impressive impact on this field of research based on the significant number of citations to his research publications.

The director denied the petition, acknowledging the documented citations but observing "few citations existed as of the date the petition was filed," and that there was a "subsequent increase in citations of the petitioner's research." The director cited *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. The director reasoned that, given the lateness of these citations, they cannot establish the impact of the petitioner's work as of the filing date.

On appeal, counsel argues that the director did not give due consideration to the petitioner's evidence. Upon careful review of the record, we concur with counsel's assertion. We find the director's logic to be misplaced. The director correctly noted that the petitioner's citation rate increased after the October 2003 filing date, but these later citations concern work that the petitioner had already published before the filing date. The cited research work took place prior to the filing date, and therefore it is appropriate to conclude that the petitioner had already undertaken and published high-impact work before the filing date. The subsequent citations and references to the petitioner's work do not alter the importance of that work; they merely document it.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.